

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and the following commentary.

Claim 1 is amended above. Also presented above is a detailed listing, with an appropriate defined status identifier, of all claims that are or were in the application, irrespective of whether the claim(s) remain under examination. Upon entry of this amendment, claims 1-27 will be pending.

Objections Under 35 U.S.C. §103

The subject matter of the various claims is commonly owned. Accordingly, there are no changes in inventor or invention dates of the claims.

The Office Action has rejected claims 1-7, 11, 17-22 and 24-26 over Sing (U.S. 6,146,667) in view of Kosikowski (U.S. 5,098,721). Acknowledging that Sing does not teach a method where the inoculum first is concentrated and then divided into subsets, the Office Action relies on Kosikowski as teaching a common practice of dividing mother cultures into subsets for use as a bulk starter. In view of amended claim 1, Applicants respectfully traverse this rejection.

No reasonable reading of Sing with Kosikowski could have suggested present claim 1, which recites (i) the provision of a divided subset to a different location, and (ii) the use of a subset to inoculate a cultivation medium at the different location, respectively. Even as interpreted by the Examiner, Kosikowski expressly teaches dividing a mother culture and inoculating separate media at the same location as where it is divided.

Thus, the cited prior art fails to presage the presently claimed invention because that latter entails division of the stock inoculum material (SIM) and subsequent inoculation of cultivation medium, with a subset of SIM, at a different plant site. By the same token, the cited combination of references does not disclose each limitation of claim 1, thereby underscoring the absence of a *prima facie* case of obviousness.

Since Kosikowski actually teaches away from the claimed invention, moreover, it is improper to combine it with Sing in the manner posited by the Office Action. Kosikowski describes screening the various media to select the best inoculum for making a larger volume of starter culture, an approach that requires a second step of propagation (column 1). This is antithetical to the direct, one-step inoculation as described in subsection (b) of claim 1, whereby the claimed cultivation medium is not screened but instead is allowed to grow into the starter culture. This distinction is important because the claimed inoculation method insures that the starter cultures are of a consistent quality. By contrast, the prior-art methodology, with its screening and stepwise/successive propagation, makes it impossible to predict the quality of the produced starter culture, even while it wastes resources associated with stepwise propagation. Conversely, the presently claimed invention is characterized by an unexpectedly low variation in quality among commercial starter cultures thus produced (see Table 1.1 in Applicants' specification).

Applicants submit, therefore, that no permutation of Sing and Kosikowski with the other cited documents -- Czulak *et al.*, Lizak, Vandenberg *et al.*, Matsumiya *et al.*, Rimler *et al.* -- renders claim 1 obvious, within the meaning of Section 103. All of the dependent claims likewise are deemed allowable over the art of record.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner also is invited to contact the undersigned by telephone if it is feels that any other point requires further consideration.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.



Atty. Dkt. No. 030307-0197

Respectfully submitted,

Date December 28, 2004

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5404
Facsimile: (202) 672-5399

By Jason E. Pauls

Jason E. Pauls
Registration No. 45,651, For
Stephen A. Bent
Registration No. 29,768
Attorney for Applicants